

digest of decisions

Independent Review Service for the Social Fund

Autumn 2002 issue 23

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Independent Review Service
for the Social Fund

Introduction

Autumn 2002 issue 23

You will see that, for the first time, the numbering of the Digest is the same as the main Journal. They had been different to one another because the digest began life some time after the original Journal. In response to readers' requests, we are pleased to introduce that change.

The cases in this edition of the Digest of Decisions focus on the themes of asylum seekers and refugees, shared parenting and exclusions.

As always, we welcome any suggestions about issues you would like to see covered, as well as comments about particular cases, or about the Digest in general. Please address these to either Judy Caldicott or Beryl Wright at the IRS address shown below.

Readers of the Digest are encouraged to reproduce and circulate copies to allow a wider circulation.

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Application Details

Miss A applied for a community care grant on 20 March 2002 for items of furniture and household equipment. Miss A was an asylum seeker. She arrived in the UK in December 2000 and was placed in hotel accommodation in London. In October 2001, Miss A moved to accommodation provided by the local authority in Derby. In December 2001 she was granted leave to remain in the UK. Miss A applied to the local council for a tenancy and this was granted in February 2002.

The Benefits Agency's Decision

The Reviewing Officer (RO) decided that as an asylum seeker setting up home, Miss A satisfied the conditions of Direction 4(a)(v). The RO awarded Miss A a grant of £590 to buy items of furniture for her home.

The Social Fund Inspector's Decision

In his statement of issues, the Social Fund Inspector (SFI) informed Miss A that despite the grant award, the crucial issue in her case was whether or not she actually qualified for a grant. He asked her to provide details about her resettlement programme. Miss A did not reply to either the statement or a subsequent reminder. The SFI decided that the RO's decision had not been reached correctly. The evidence in the papers did not support the RO's view that she was setting up home as part of a planned programme of resettlement. Miss A did not satisfy any other parts of Direction 4. The SFI decided that a grant should not have been awarded, but he did not disturb the payment that had already been made.

Comment

The aim of Direction 4(a)(v) is to help the applicant set up home in the community as part of a planned resettlement programme following a period during which he has been without a settled way of life. In Miss A's case it is clear that she had been without a settled way of life. But the key question is whether she was setting up home as part of a planned programme of resettlement. The fact that Miss A is an asylum seeker does not in itself mean the condition is met. There has to be evidence of a programme that includes a series of things that are intended to happen. The evidence did not show that Miss A had received help or support in finding the accommodation, or that she was receiving help in the ongoing process of setting up home. Neither did the evidence show that she was pursuing her own planned programme of resettlement. The RO's decision - that Direction 4(a)(v) was met - was not supported by the evidence.

Application Details

Mr K applied for a community care grant on 4 July 2001 for various items of furniture and household equipment.

Mr K was seeking asylum in this country. He was receiving income-based Jobseeker's Allowance. He arrived in the United Kingdom in February 2000. Initially he stayed in temporary accommodation. When this was no longer available to him, he had obtained a council property. He had nothing in the way of furniture or household equipment. Although having been in this country for some time, the Home Office had still to decide his status. Mr K spoke very little English. His initial application form had been completed with the help of a friend. Up until the refusal of an award, Mr K had not been formally represented by anyone.

The Benefits Agency's Decision

The Reviewing Officer (RO) concluded, on the limited evidence available, that no part of Direction 4 was met for a community care grant to be awarded. Mr K had failed to attend an interview arranged to discuss his application. Although the RO accepted Mr K had been without a settled way of life for some time, the evidence presented did not indicate he was setting up home as part of a planned resettlement programme. No award was made.

The Social Fund Inspector's Decision

Following the refusal of an award, Mr K had sought help from a refugees association. They agreed to represent him in his request for a review. A statement of issues was sent to them and considerably more information, plus a copy of Mr K's resettlement plan was sent to the Social Fund Inspector (SFI). This led the SFI to conclude that, although the RO had reached his decision correctly, it no longer remained the right outcome in all the circumstances. Mr K was an asylum seeker whose status was still undecided. He had been in temporary accommodation for some time but now had a permanent home. He was in a foreign country, spoke very little of the language and was unable to make provision for his future without a decision from the Home Office. The SFI accepted Direction 4(a)(v) was met and an award for a bed, bedding, cooker, crockery, cutlery, kitchen utensils and seating was made.

Comment

This case illustrates the importance for refugees and asylum seekers, who may speak very little English, to be properly represented. Even with his friend's initial help, Mr K had not been able to adequately support his application for help by way of a grant. However, once a representative became involved the necessary evidence and documentation led to a successful outcome in this case. The evidence showed that he had been receiving, and was continuing to receive, help in the form of a planned resettlement programme, clearly showing elements of control and progression.

Application Details

Mr H applied for a community care grant (CCG) on 5 March 2002 for various items of furniture and household equipment.

Mr H had come to the United Kingdom in February 2001 as a refugee, seeking asylum. He had suffered torture in his home country. Leave to remain in the UK had been granted in November 2001. Mr H remained in temporary accommodation until February 2002 when, as part of his planned resettlement programme, he obtained an unfurnished council flat. He had nothing to furnish his home with.

The Benefits Agency's Decision

Mr H attended the review interview alone. The Reviewing Officer (RO) decided that the information provided did not show there was a resettlement plan in process. He concluded that Direction 4(a)(v) was not met as an award would not help him set up home in the community as part of a planned resettlement programme. He refused an award.

The Social Fund Inspector's Decision

It was clear from the papers that Mr H had a poor understanding of English as well as the Social Fund process. In his Social Fund Inspector (SFI) review request Mr H was now being represented, and the Inspector's statement of issues was sent to his representative.

Evidence was provided in the response that showed Mr H was following a planned resettlement programme. The SFI decided that the RO had given Mr H the opportunity to put his case, even though it yielded little benefit because of the language difficulty. The RO's decision had been reached correctly at the time.

However, the SFI now had new evidence which effectively meant that only now had Mr H had a full opportunity to put his case. Given that new information, the SFI decided Mr H qualified for a CCG to help him set up home in the community, and that a grant award for some household items was now the right outcome.

Comment

This case serves to illustrate the need for decision makers to recognise the difficulties faced by applicants who are new to the UK and whose first language is not English. Not being able to properly support his need for household items, or explain his resettlement programme, had resulted in Mr H being refused an award. In seeking representation, Mr H was able to fully explain and support his application, and this changed the outcome of his case.

Application Details

Mrs A applied for a community care grant on 11 March 2002 for the cost of repairing the back door of her home. No award was made.

Mrs A lived in local authority accommodation with her two teenage children. Her children had locked themselves out of their home while Miss A was out. They broke the glass panel in her back door and damaged the doorframe while trying to gain access to their home.

The Benefits Agency's Decision

Mrs A attended a review interview. She explained that she was reluctant to inform the local authority housing office that her door had been damaged. They had previously replaced a broken kitchen window. She did not want the local authority to know that her children had caused further damage. The Reviewing Officer (RO) decided that the cost of repairing the damage was excluded under Direction 23(1)(a)(ix) because the repairs were to the property of a local authority.

The Social Fund Inspector's Decision

The Social Fund Inspector acknowledged Mrs A's concerns, and her reasons for not wishing to contact the local authority. However, the exclusion had been correctly applied in her case, and the Inspector confirmed the RO's decision.

Comment

Direction 29 read in conjunction with Direction 23(1)(a)(ix) excludes "any repair to property of any body mentioned in section 80(1) of the Housing Act 1985 or section 61(2)(a) of the Housing (Scotland) Act 1987". This legislation sets out a list of bodies to which it applies. In this case the evidence showed that Mrs A lived in rented local authority accommodation, i.e. public sector housing. Her need was for repairs to the home she rented. This need was properly excluded by the Social Fund Decision Makers.

Application Details

Mr T applied for a community care grant on 6 June 2002 for the cost of a metal security door to be installed in place of the front door to his home, plus a closed circuit TV system which would monitor both front and back doors, and which could be linked to his television set. No award was made.

Mr T lived with his wife and family in their own home. His application outlined a period of intimidation from others, and reasons why he felt that the safety of himself and his family were under threat when they were at home. He was unable to move home, and said that the items were the minimum he needed to protect his family.

The Social Security Agency's Decision

The Reviewing Officer decided that help with these needs could not be given because they were costs associated with home or personal security, and were therefore excluded expenses under Direction 29.

The Social Fund Inspector's Decision

The Inspector noted that the items needed by Mr T were, by his own evidence, specifically associated with home or personal security. And since they were not locks, bolts, door chains or door viewers for outside doors or windows, he concluded that the exclusion applied. The Inspector confirmed the Reviewing Officer's decision.

Comment

The Northern Ireland Social Fund scheme has one main difference to the scheme in Great Britain. An additional provision – in Directions 29 and 23(2)(h) - excludes, for both community care grants and crisis loans, payments in relation to:

“ costs associated with home or personal security measures other than locks, bolts, door chains and door viewers for outside doors and windows. ”

The Direction does not go any further in specifying what costs are excluded. However, the fact that normal household security items such as locks and bolts are excepted from the exclusion would suggest that the more sophisticated and specialised security items such as fortified inner doors, sensor lighting, closed circuit television systems etc are excluded. For these reasons the Inspector was satisfied that the exceptions to the exclusion did not apply to Mr T's needs. As such, Direction 29 prevented an award.

With the Human Rights Act now in force, it is possible that applicants may assert some of the rights set out therein (see Carlo Rioda's article on page 4 of this issue of the Journal). For example, the right to life under Article 2 of the Act may be cited in the area of security cost exclusions, and this may give rise to some interesting developments in the future.

Application Details

Mr M applied for a community care grant (CCG) on 10 October 2001 for £900 to replace a floor and a patio door.

Mr M had multiple sclerosis. He was dependent on a Zimmer frame or a wheelchair to get about. He was an owner-occupier who had recently moved into a new home that already had a ramp fitted at the rear of the house. However, the existing patio door was jammed, and was not compatible with Mr M's safe use of the ramp. In addition, the adjoining living room floor was rotten and needed replacing. The work on both the door and floor needed to be done to allow the ramp access work to be carried out.

The Benefits Agency's Decision

The Reviewing Officer decided that these expenses were housing costs, and that they were not minor repairs or improvements. As such they were excluded from the CCG scheme, so no award could be made.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) examined all the evidence about the extent and nature of the work involved, including formal estimates provided by Mr M. These showed that the work involved removal of the old patio door frame, making good the brickwork for the new frame before installing it, plus removal and replacement of several square metres of floorboards and joist timbers. The work was likely to involve two men working for two to three days.

In his statement of issues, the SFI advised Mr M that the exclusion was relevant in his case, and explained why. He went on to say that the evidence suggested that the work requested was a repair or improvement, and that help with repairs and improvements is excluded unless it can be shown that they are minor. The SFI invited Mr M to add any further evidence he had on this point. In spite of a reminder, Mr M did not reply. The SFI found the decision was correctly reached and was the right decision in all the circumstances.

Comment

The Secretary of State's Direction 29 says that some types of expense are excluded from the CCG scheme. The relevant provision in this case is Direction 29(d) and relates to housing costs. Housing costs are the costs of a person's accommodation and they include "repairs and improvements to the dwelling occupied as the home". The relationship between the repair or improvement and the dwelling is important. In this case Mr M needed a replacement floor and patio or French doors. The repairs were interdependent and clearly constituted a repair to the dwelling occupied as the home.

The exceptions to the Direction allow for minor repairs or improvements. To gauge whether something is minor, the Secretary of State's guidance suggests looking at a combination of things. These are the cost, the nature and extent of the work, and the time needed to complete the work. The formal estimates provided in this case indicated extensive and costly repairs that would take some time to complete. Although Mr M's needs were important and necessary due to his health, they were housing costs, and so the exclusion nevertheless applied.

Application Details

Mr D applied for a crisis loan (CL) of £1000 on 30 April 2002 for help to replace his central heating boiler.

Mr D lived with his wife and four children aged one, three, five and seven in his own home. He was working and receiving Working Families Tax Credit along with his wages. His central heating boiler had broken down and the family had been without heating and hot water for over a week. Mr D had tried to obtain a loan from both his bank and loan companies but had been turned down. Mr D had provided an estimate with his application, showing the exact nature of what had to be done, estimating it would take between three to four days at a cost of around £1100.

The Benefits Agency's Decision

The Reviewing Officer decided the need was an excluded expense for CL purposes. It was a housing cost so no award could be made.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) examined a detailed estimate of the work. It involved removal of the old boiler and water pump, flushing out the system, installing the new items, plus some alterations to pipework and electrics. The importance of the work was significant, since no heating or hot water would be available in the home unless it was carried out. The nature, extent and cost of the work involved did not suggest it was a minor repair or improvement.

In his statement of issues, the SFI advised Mr D that the exclusion was relevant in his case, and explained why. He went on to say that the evidence suggested that the work requested was a repair or improvement, and that help with repairs and improvements is excluded unless it can be shown that they are minor. The SFI invited Mr D to add any further evidence he had on this point. Mr D replied that he had nothing to add to the detail of the estimate, but emphasised the effects on his family of the lack of heating and hot water. Whilst acknowledging those difficulties, the SFI found that the decision had been reached correctly and was the right decision in all the circumstances.

Comment

Direction 23(2)(f) for crisis loans (and Direction 29(d) for community care grants) excludes help with housing costs. These include repairs and improvements to the dwelling occupied as the home. The only exception to that is if the repair or improvement is "minor". The Secretary of State's guidance on how to decide if something falls into this category is to consider the cost, nature and extent of the work. However, it is normally the type of work, not the cost which determines if it is minor.

In this case the work to be carried out would have taken a number of days. It involved removing the old boiler, replacing it with a new model, plus all the associated plumbing and rewiring work that this would entail. Taking account of all these factors the work to be done was not of a minor nature.

Application Details

Mr T applied for a community care grant (CCG) of £900 on 22 February 2002 for an orthopaedic chair.

Mr T lived alone and received Income Support and Disability Living Allowance. He had been involved in a car crash three years ago and had fractured several bones. Since then he had experienced back problems and memory problems related to the accident. He continued to receive treatment and medication for these. Mr A had been given an upright chair with a hard back by the Social Work Department at the hospital. Despite this his back continued to be sore. He felt an orthopaedic chair would provide him with additional support and this would ease his problems.

The Benefits Agency's Decision

The Reviewing Officer decided the chair was an excluded expense for CCG purposes. He concluded it was a medical item. No award was made.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) decided the decision had not been reached correctly because the law had been applied wrongly. The chair could not be considered a medical item as it was an ordinary everyday item and not manufactured solely to cure, alleviate, treat, diagnose or prevent a medical condition. It might help relieve some pain and discomfort but would not treat or alleviate the condition itself.

The SFI went on to consider an award. However, after obtaining further information about the extent of Mr T's condition and his Occupational Therapist's view about his need for such a chair, she decided it was of insufficient priority for an award to be made.

Comment

Direction 29, read in conjunction with Direction 23, excludes certain items from CCG awards. These include medical, surgical, optical, aural or dental items or services. However, the Secretary of State's guidance on what a medical item is suggests that items in everyday use should not be regarded as medical items. With this in mind, the type of question to be asked is – has the item been manufactured for the sole purpose of curing, alleviating, treating, diagnosing or preventing a medical condition? If it has then it should be excluded as a medical item. If it has not then it is not a medical item and can be considered.

In this case, the National Health Service was fulfilling its responsibility to Mr T by providing him with seating appropriate to his specific needs. The need for an orthopaedic chair was Mr T's personal view. Given that the item in question – a chair - is an ordinary item in everyday use, it should not have been excluded as a medical item. The SFI was right to fully consider, rather than exclude, this need.

Application Details

Mr C applied for a crisis loan on 27 December 2001 for £18.50 for travel costs for him to attend a court hearing the next day.

Mr C registered as available for work and received income-based Jobseeker's Allowance. He had received his normal fortnight's benefit on 20 December 2001 but had spent all that by 27 December. He was not due any more benefit until 3 January 2002. He stated he had no money to attend a court hearing the following day. He feared if he did not attend, a warrant for his arrest would be issued.

The Benefits Agency's Decision

The Reviewing Officer decided that the need for the travelling expenses was an excluded expense and so these could not be considered. He reasoned that the travel was for the sole purpose of complying with a court matter, and would not otherwise be undertaken. No award was made.

The Social Fund Inspector's Decision

The Social Fund Inspector found that the decision had been correctly reached. Travelling expenses in connection with court proceedings are excluded expenses for a crisis loan. He confirmed that the decision had been reached correctly, and that it was the right outcome in all the circumstances.

Comment

Direction 23 for crisis loans and Direction 29 for community care grants detail those expenses for which a crisis loan and/or community care grant can never be paid. Direction 23(1)(a)(vi) refers specifically to "expenses in connection with court (legal) proceedings" and goes on to list some examples, one of these being "travelling expenses".

So in this case, despite the urgency of the need for Mr C to attend court the following day, help by way of a crisis loan (or community care grant had this been applied for) could not be given.

Application Details

Mr L applied for a community care grant (CCG) on 25 February 2002 for a bed, bedding, curtains, carpet and bedroom furniture for his spare room.

Mr L lived alone. Until August 2001 he had lived with his ex-partner and her daughter, Stephanie, aged 10. Mr L's relationship with Stephanie had been that of father and daughter for some eight years. Mr L and his partner separated because of his drug problem. Following the split, Mr L sought treatment for his drug problem. After some failures he went on a methadone replacement programme, which eventually proved successful. His health was now much improved. He was now living in his own home. He needed items to furnish a room for Stephanie. He had started seeing Stephanie again, three times a week. This was limited to day-time contact, as Stephanie's mother would not allow her to stay overnight until Mr L had suitable items in the home.

The Benefits Agency's Decision

The Reviewing Officer (RO) decided that Mr L did not meet any part of Direction 4 for a CCG to be awarded. Although noting Mr L's claim that he wanted his daughter to be able to come to his home, the RO decided that, as she had another permanent home, and could continue seeing Mr L during the day-time several days a week, they were not facing exceptional pressures.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) decided that Direction 4(a)(iii) was met in this case. The detail of Mr L's evidence about his relationship with Stephanie showed that their separation had a marked effect on both of them. There was clear evidence of their desire to establish contact again. The SFI also took account of the problems Mr L had experienced in overcoming his drug problem, and the effect of this and the separation from Stephanie on his mental state. The SFI also accepted, given the nature of their relationship, that the separation would have affected Stephanie to a considerable extent as well. Both of them were facing exceptional pressures. He decided the need for a bed, bedding and curtains for the spare room was high priority and that an award should be made for these. He refused an award for the remaining items on priority grounds.

Comment

This case demonstrates the general principle that it is in the interests of children that they maintain contact with their parents, should their parents separate. Although the Children Act 1989 distinguishes in some ways between children whose parents are married and those whose parents are not, there is no reason why decision makers should apply a similar distinction. We should aim to apply the principles of the legislation.

In this case, Mr L, his partner and Stephanie had lived as a family for some years, despite Mr L not being Stephanie's natural father. The separation had placed both Mr L and Stephanie under exceptional pressures. By recognising these problems, the SFI showed she had addressed the primary consideration of the Children Act - that of the welfare of the child.

Application Details

Mr S applied for a community care grant (CCG) for items to equip a bedroom plus lighting and redecoration costs.

Mr S was unable to work because of psychosis. He shared the responsibility for his six-year old daughter with her mother. She was a drug addict and often had problems with her current partner. Mr S's daughter regularly stayed with him at weekends and during holidays. He found he was spending more time caring for his daughter. He wanted a grant so that he could fully equip a bedroom for his daughter to use.

The Benefits Agency's Decision

The Reviewing Officer (RO) accepted that Mr S qualified for a CCG as both Direction 4(a)(ii) and (iii) were met. He awarded a CCG for a bed and bedding. He decided that the need for curtains, a light fitting, wardrobe, chest of drawers and redecoration costs did not have enough priority for an award.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) decided that the RO's decision was correctly reached on the evidence available at the time. However, in his reply to the SFI's statement of issues, Mr S provided some additional information about his circumstances. Mr S said that because his daughter had no wardrobe or chest of drawers, she was leaving things on the floor. Mr S was becoming obsessed by the messy conditions in his daughter's bedroom and his mental state had become more confused. The SFI decided this change in circumstances was very important. He went on to increase the CCG award to include a wardrobe, chest of drawers and also a pair of curtains.

Comment

In Mr S's case there had been a significant relevant change in his circumstances after the RO's decision. There was a very strong and significant link between the need for furnishings and helping Mr S remain in the community and easing the exceptional pressures within the family. Without an increased grant for furnishings there was a real risk that Mr S would lose his place in the community and be unable to continue caring for his daughter. In these circumstances the SFI was right to increase the award.

Application Details

Mr R applied for a community care grant (CCG) for items of furniture and household equipment. He was setting up his own home in an unfurnished tenancy. He had severe arthritis of the knees and hips that restricted his mobility. He took strong painkillers which made him lethargic and confined him to the home for much of the day.

He had recently separated, having previously lived with a partner and her three children. He had claimed benefit for them as a family, and had parental responsibility for the children. He was put out of the family home by his partner's parents, who had constantly interfered with their relationship.

Although not their natural father, he had negotiated weekend access to the children. He could not visit them at their home, so was initially seeing them at his mother's address. His mother was in poor health and this arrangement was causing them both difficulties. Mr R needed help to establish his new home for himself, but also needed beds and bedding for the children to properly establish the new access arrangements.

The Benefits Agency's Decision

The Reviewing Officer (RO) decided that Mr R qualified for a grant under Direction 4(a)(ii). An award would help him remain in the community rather than enter care. However, he concluded that as Mr R was now a single man, and he was not the children's biological father, they were not a family within the meaning of Direction 4(a)(iii). Therefore the RO went on to award items of furniture for Mr R's own use only.

The Social Fund Inspector's Decision

Although the RO had rightly found that Mr R qualified for a grant under Direction 4(a)(ii), his decision had not been reached correctly in relation to Direction 4(a)(iii). That in turn had directly impacted upon the priority of Mr R's needs. The Social Fund Inspector went on to find that both parts of Direction 4 were met, as an award would also ease exceptional pressures on Mr R and his family. He awarded an additional grant for beds and bedding for the children.

Comment

The most important statute dealing with the position of children is the Children Act 1989. The general legal and social policy is that it is in the interests of children that they maintain contact with their parents, should they separate. Many CCG applications concern separated families where there are children involved.

The evidence in this case showed that Mr R and his partner's children should be regarded as a family. Both he and his family had expectations that contact would be maintained. Mr R was unable to see the children at their home, and there was a real risk that he would be unable to continue seeing them at his mother's home. The lack of facilities for the children to stay with Mr R was putting him and his family under exceptional pressures. In these circumstances, the SFI was right to find that Direction 4(a)(iii) was met, and to make an additional award for beds and bedding to allow the children to stay.

